

Appendix B

- **CAPCOA Title V Attachment**
- **Memo on Objection Communication Strategy**
- **Example: Objection Letter**

CAPCOA Title V Attachment - February 19, 1999

Neither the guidance in Part I nor the process in Part II replaces or alters any requirements contained in Title V of the Clean Air Act or 40 CFR Part 70.

Part I. Guidance on Information Necessary to Begin 45-day EPA Review

A complete submittal to EPA for a proposed permit consists of the application (if one has not already been sent to EPA), the proposed permit, and a statement of basis. If applicable to the Title V facility (and not already included in the application or proposed permit) the statement of basis should include the following:

- additions of permitted equipment which were not included in the application;
- identification of any applicable requirements for insignificant activities or State-registered portable equipment that have not previously been identified at the Title V facility,
- outdated SIP requirement streamlining demonstrations,
- multiple applicable requirements streamlining demonstrations,
- permit shields,
- alternative operating scenarios,
- compliance schedules,
- CAM requirements,
- plant wide allowable emission limits (PAL) or other voluntary limits,
- any district permits to operate or authority to construct permits;
- periodic monitoring decisions, where the decisions deviate from already agreed-upon levels (e.g., monitoring decisions agreed upon by the district and EPA either through: the Title V periodic monitoring workgroup; or another Title V permit for a similar source). These decisions could be part of the permit package or could reside in a publicly available document.

CAPCOA Title V Attachment - February 19, 1999

Part II. The Review Process

The following five-point process serves to clarify expectations for reviewing Title V permits and coordinating information on Title V permits between EPA Region IX ("EPA") and Air Pollution Districts in California ("District"). Districts electing to follow this process can expect the following. Districts may, at their discretion, make separate arrangements with Region IX to implement their specific Title V permit reviews differently.

Point 1: The 45-day clock will start one day after EPA receives all necessary information to adequately review the title V permit to allow for internal distribution of the documents. Districts may use return receipt mail, courier services, Lotus Notes, or any other means they wish to transmit a package and obtain third party assurance that EPA received it. If a District would like written notice from EPA of when EPA received the proposed title V permit, the District should notify EPA of this desire in writing. After receiving the request, Region IX will provide written response acknowledging receipt of permits as follows:

(Date)

Dear (APCO):

We have received your proposed Title V permit for (Source Name) on (Date). If, after 45-days from the date indicated above, you or anyone in your office has not heard from us regarding this permit, you may assume our 45-day review period is over.

Sincerely,

Matt Haber
Chief, Permits Office

Point 2: After EPA receives the proposed permit, the permit application, and all necessary supporting information, the 45-day clock may not be stopped or paused by either a District or EPA, except when EPA approves or objects to the issuance of a permit.

Point 3: The Districts recognize that EPA may need additional information to complete its title V permit review. If a specific question arises, the District involved will respond as best it can by providing additional background information, access to background records, or a copy of the specific document.

The EPA will act expeditiously to identify, request and review additional information and the districts will act expeditiously to provide additional information. If EPA determines there is a basis for objection, including the absence of information necessary to review adequately the proposed permit, EPA may object to the issuance of the permit. If EPA determines that it needs more information to reach a decision, it may allow the permit to issue and reopen the permit after the information has been received and reviewed.

Point 4: When EPA objects to a permit, the Subcommittee requested that the objection letter identify why we objected to a permit, the legal basis for the objection, and a proposal suggesting how to correct the permit to resolve the objection.

It has always been our intent to meet this request. In the future, when commenting on, or objecting to Title V permits, our letters will identify recommended improvements to correct the permit. For objection letters, EPA will identify why we objected to a permit, the legal basis for the objection, and details about how to correct the permit to resolve the objection. Part 70 states that "Any EPA objection...shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections."

Point 5: When EPA objects to a permit, and a District has provided information with the intent to correct the objection issues, the Subcommittee members requested a letter from EPA at the end of the 90-day period stating whether the information provided by the District has satisfied the objection.

While we agree with the Districts' desire for clear, written communication from EPA, a written response will not always be possible by the 90th day because the regulations allow a District 90 days to provide information. To allow EPA ample time to evaluate submitted information to determine whether the objection issues have been satisfied, we propose establishing a clear protocol. The following protocol was agreed to by members of the Subcommittee:

1. within 60 days of an EPA objection, the District should revise and submit a proposed permit in response to the objection;
2. within 30 days after receipt of revised permit, EPA should evaluate information and provide written response to the District stating whether the information provided by the District has satisfied the objection.

May 30, 1997

MEMORANDUM

SUBJECT: Title V Permit Objection Communication Strategy

FROM: Thomas C. Curran, Director /s/
Information Transfer and Program
Integration Division (MD-12)

TO: Deputy Office Director, Office of Ecosystem Protection
Region I
Director, Division of Environmental Planning and
Protection, Region II
Director, Air, Toxics and Radiation Division,
Region III
Director, Air, Pesticides and Toxics Management
Division, Region IV
Director, Air and Radiation Division, Region V
Director, Multimedia Planning and Permitting Division,
Region VI
Director, Air, RCRA, and Toxics Division, Region VII
Assistant Regional Administrator, Pollution Prevention,
State and Tribal Programs, Region VIII
Director, Air and Toxics Division, Region IX
Director, Office of Air Quality, Region X

As the Headquarters' lead office for title V, OAQPS serves as the overall EPA coordination office on operating permits. Acknowledging the need for the Regions to review title V permits, Headquarters management wishes to stay abreast of objections raised by the Regions during title V permit reviews and of all final Regional permit objection decisions. This information will be useful to Regional offices since problematic permit issues in one Region might also be found in other Regions. By gaining information about similar issues in other Regions and how they were addressed, then each Region can take this information and make more informed decisions on its own permit review issues. In addition, given the limited resources available in the Agency which make thorough review of all permits difficult, enhanced communications provides a mechanism for sharing expertise. This

memorandum outlines a communications strategy to keep Headquarters and Regional offices aware of official objections to title V permits.

Communication Strategy

The biweekly title V permits call has been, and will continue to be, our principal mechanism for raising and discussing issues related to review of proposed title V permits. This approach provides opportunities to keep the EPA title V community abreast of troublesome permits and how Regions are resolving the concerns. Most often these troublesome permits get resolved before EPA's review period is up. However, where there is the need for an EPA objection letter, it is requested that the Region send the Headquarters contacts listed below, via the LAN, an electronic draft of the objection letter with as much advance notice as possible (but at least by the time the letter is being routed for Regional signoff), to allow for reasonable Headquarters review. (The objection letter should clearly identify the basis for the objection--see the letter from Region IX for an example.) The LAN copy should be sent to Kirt Cox in the Operating Permits Group, John Walke in the Office of General Counsel, Robert Dresdner in the Office of Enforcement and Compliance Assurance, David Garcia in Region VI as sublead Region for permits, and the Region's Desk Officer in OAQPS. Headquarters management will be appropriately informed. For the benefit of the other Regions and Headquarters, a one-page summary of the issue(s) should also be prepared and forwarded to the above mentioned individuals, ideally at the same time the objection letter is shared and, hopefully, no later than the ensuing biweekly permits call. The objection letter, along with the one-page summary, will then be an agenda topic during the subsequent biweekly call (as was done by Regions IV and IX for the permits in Mississippi and Bay Area). It is also important to note that appropriate and timely contact with Regional Counsel and the Office of General Counsel should be undertaken during preparation of the objection letter. This will ensure the needed legal support should the objection be the subject of later legal challenge.

It is still too early in the implementation phase of title V programs around the country to tell how often issues will arise that may result in official Agency objections. As noted earlier, it has been a rare occurrence to date. Given this, a computerized tracking system is not being developed at this time to track these objection letters. Presently, tracking can be done solely through the notification process described above. At some future date, we will revisit this question and devise a data base management system, in consultation with each Region, if the volume of permit objections warrants it.

Should you have any questions on this memorandum, please contact Kirt Cox of my staff at (919) 541-5399.

cc: R. Dresdner
A. Duncan
D. Garcia
B. Kellam
J. Seitz
J. Walke
L. Wegman
OAQPS Regional Desk Officers
Operating Permits Group Staff
Regional Air Program Managers
Regional Title V Contacts

Sample Objection Letter

Dear Air Pollution Control Officer:

The purpose of this letter is to tell you the results of our review of the proposed [District] Title V permit for the [Facility], which was received by EPA on [Date]. Based on our review of the proposed permit and the supporting information, EPA formally objects, pursuant to our authority under 40 Code of Federal Regulations (“CFR”) §70.8(c) (see also District Rule X), to the issuance of the proposed permit on the basis that it does not fully meet the periodic monitoring requirements of §70.6(a)(3)(i). As a general matter, EPA may object to proposed permits of reopen issued permits that do not meet the periodic monitoring requirements of Part 70. Enclosure 1 contains a detailed explanation of the efficiency and the changes necessary to make the permit consistent with the requirements of Part 70.

Under 40 CFR §70.8(c), EPA may object to proposed Part 70 permit which is determined not to be in compliance with applicable requirements, or fails to meet the requirements of part 70. After EPA objects to a permit, the permitting authority has 90 days to satisfy the objection. If the 90 days pass without the objection being fully satisfied, section 505(c) of the Clean Air Act and 40 CFR §70.8(c)(4) require that the authority to issue or deny the permit pass to EPA. Because the objection issues must be fully corrected within the 90 days, we suggest that revised permit be submitted in advance in order that any outstanding issues can be addressed prior to the expiration of the 90-day period.

In addition to our explanation of the objection issue in Enclosure 1, we have enclosed additional comments on the proposed permit in Enclosure 2¹. I would like to thank you and your staff for all your help in providing information to aid our review and in discussing these issues with us. In the enclosed comments, we have tried to provide clear directions as to how to address the objection issue, and we can provide further assistance at your request. We are committed to working with you to resolve these issues. If you have any questions concerning our comments, please contact [EPA contact].

Sincerely,

David P. Howekamp
Director
Air Division

¹Enclosure 2 is not included in this Appendix.

Sample Objection Letter (continued)

Enclosure 1

District Rule Y states that each Part 70 permit “shall require periodic monitoring sufficient to yield reliable data which are representative of the sources’s compliance with permit conditions over the relevant time period. The permit shall state such requirements explicitly, and not by reference.” The District regulation is based on 40 CFR §70.6(a)(3)(i)(B), which requires “...periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of source’s compliance with the permit...” and on Sections 503 and 504 of the Clean Air Act, which require that Part 70 permits contain “conditions as are necessary to assure compliance with applicable requirements,” and “monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.”

EPA objects to the issuance of the permit due to insufficient periodic monitoring with respect to opacity. The proposed periodic monitoring for opacity for both the gas turbines and boilers, when fired on fuel oil, does not adequately assure compliance with the opacity limit of 40%. The permit does not place any restrictions on fuel oil burning.

The permit must either contain periodic monitoring requirements that will assure compliance with the opacity limit, or limit fuel oil use so that periodic monitoring for opacity is not a concern. EPA’s primary concern is the insufficient periodic monitoring for opacity in the event of fuel oil burning in the boilers and turbines. One option would be to restrict the boilers and turbines to combusting only natural gas, which is consistent with their current operation. Otherwise, the permit must require [Facility] to conduct visible emissions testing when the boilers start burning oil and when the turbines commence operation, and to conduct additional periodic monitoring for opacity if fuel oil use continues.